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7 Deutsche Bank National Trust Company, as Certificate
8 Trustee on behalf of Bosco Credit II Trust Series 2010-1

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA
FRESNO DIVISION

In Re: Carmen Reyes Avila,) CASE NO.: 18-11242
)
)
) CHAPTER 13
)
) Debtor.) **OBJECTION TO CHAPTER 13**
) **PLAN**
)
) **341(a) Meeting of Creditors:**
) Date: 5/22/18
) Time: 11:30 AM
)
) **Confirmation hearing:**
) Date: July 12, 2018
) Time: 9:00 AM
) Place: U.S. Bankruptcy Court
) 510 19th Street
) Bakersfield, CA 93301
)
) Judge: Rene Lastreto II

1 TO ALL PARTIES IN INTEREST AND TO THEIR ATTORNEYS OF RECORD:

2 Deutsche Bank National Trust Company, as Certificate Trustee on behalf of Bosco Credit
3 II Trust Series 2010-1, its successors and/or assignees, (“Secured Creditor”) in the above-
4 entitled Bankruptcy proceeding, hereby submits the following Objections to Confirmation of
5 the Chapter 13 Plan proposed by (“Debtor”) Carmen Reyes Avila.

6 Secured Creditor is entitled to receive payments pursuant to a Promissory Note which
7 matures on 9/1/2022 and is secured by a Deed of Trust on the subject property commonly known
8 as 1307 Concord Street, Delano, California 93215. As of 3/30/18, the Secured Creditor has a full
9 balance claim of approximately \$88,902.15, as described in the Proof of Claim filed by Secured
10 Creditor; Secured Creditor files this Objection to protect its interests.

11 **ARGUMENT**

12 Under 11 U.S.C. §1325, the provisions for plan confirmation in a Chapter 13 have been
13 set. Unless otherwise ordered, under 11 U.S.C. § 1326(a)(1), the Debtor shall commence making
14 the payments proposed by the Plan within 30 days after the Petition is filed. The Plan must
15 comply with all applicable provisions of 11 U.S.C. § 1325 to be confirmed. Based on the
16 foregoing, as more fullyg detailed below, the Plan cannot be confirmed as proposed.

17 **A. IMPERMISSIBLY MODIFIES SECURED CREDITOR’S RIGHTS**

18 Under 11 U.S.C. §1322(b)(2), a Plan that modifies the rights of a creditor whose claim
19 is secured only by a security interest in real property that is debtor’s principal residence is
20 impermissible. The plan only lists \$86,032.07 for the total balance claim when the actual claim
21 amount is \$88,902.15. That reduction in the claim is an impermissible modification. The
22 proposed Plan also does not set forth a reasonable schedule and time period for the payment of
23 the claim owed to Secured Creditor because the proposed plan would not pay the full balance
24 claim before the end of the plan term. To pay the full balance claim of \$88,902.15 over a 60
25 month Plan, Secured Creditor must receive a minimum payment of \$1,677.69 per month from
26 the Debtor through the Plan. Debtor’s Plan provides for payments in the amount of \$1624 per
27 month for 12 months. Therefore, the Plan is not feasible.

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CONCLUSION

4 Any Chapter 13 Plan proposed by the Debtor must provide for and eliminate the
5 Objections specified above in order to be reasonable and to comply with applicable provisions
6 of the Bankruptcy Code. Secured Creditor respectfully requests that confirmation of the Chapter
7 13 Plan as proposed by the Debtor be denied.

8 WHEREFORE, Secured Creditor prays as follows:

1. Confirmation of the Proposed Chapter 13 Plan be denied; or, in the alternative,
2. Debtor's plan be amended to reflect the arrears amount listed in Secured Creditor's filed proof of claim
3. For attorneys' fees and costs herein, and
4. For such other relief as this Court deems proper.

Dated: May 21, 2018

LAW OFFICES OF MICHELLE GHIDOTTI

/s/ Kristin A. Zilberstein

Kristin A. Zilberstein, Esq.

Counsel for Deutsche Bank National Trust Company, as Certificate Trustee on behalf of Bosco Credit II Trust Series 2010-1